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No. 71-792

In the Supreme Court of the United States

OCTOBER TERM, 1971

BOBBY GENE GRUBBS AND BOBBY RAY KNIGHT,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530

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After a jury trial in the United States District Court for the Northern District of Texas, petitioners were convicted of possessing 566 cases of spark plugs stolen from an interstate shipment, in violation of 18 U.S.C. 659. The court of appeals affirmed on October 4, 1971 (Pet. App. A). The petition for a writ of certiorari was filed on December 14, 1971, and is out of time under Rule 22(a) of the Rules of this Court. In any event, there are no questions warranting review by this Court.

Petitioners contend that the stolen spark plugs were seized unlawfully and thus should not have been admitted into evidence, and that the trial judge was wrong to instruct the jury that recent possession of stolen property, if not satisfactorily explained, would support an inference that the possessor knew that the goods had been stolen. These contentions are fully answered in the opinion of the court below (Pet. App. A, pp. 12-15, 18), on which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1972.

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